

AMENDED IN SENATE JUNE 26, 2006

AMENDED IN SENATE JUNE 1, 2006

AMENDED IN SENATE JUNE 27, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1749

Introduced by Assembly Member Jerome Horton
(Principal coauthor: Senator Ortiz)

March 9, 2005

An act to amend Sections 22971 and 22980.1 of, to add Sections 22979.21, 22979.22, 22979.23, and 22979.24 to, and to repeal Chapter 7 (commencing with Section 22995) of Division 8.6 of, the Business and Professions Code, to amend Section 308.1 of, and to amend and repeal Section 830.11 of, the Penal Code, and to amend Sections 30019, 30142, 30168, 30435, 30473, 30474, 30474.1, and 30475 of, and to repeal Sections 30216 and 30359 of, the Revenue and Taxation Code, relating to cigarettes and tobacco products, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1749, as amended, Jerome Horton. Cigarettes and tobacco products.

(1) The California Cigarette and Tobacco Products Licensing Act of 2003 provides, until January 1, 2010, for the licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, importers, and retailers of cigarettes or tobacco products that are engaged in business in California.

This bill would require manufacturers and importers of specified tobacco products engaged in business in this state to obtain and

maintain a license. This bill would require these manufacturers or importers to provide the board with specified information, submit a license application to the board, as described, pay a one-time license fee of \$2,000 or \$10,000, as specified, and submit a monthly report to the board providing information regarding sales of tobacco products, including the wholesale cost of the tobacco products, subject to suspension or revocation of the license, as provided. This bill would require an applicant to verify the accuracy of the application and to affirm that the applicant has not been convicted of a felony and has not and will not violate or cause or permit to be violated the licensing requirement, subject to the imposition of criminal penalties as a misdemeanor, thus imposing a state-mandated local program.

(2) Existing law defines an “importer” as any purchaser in the United States of cigarettes manufactured outside of the United States.

This bill would also redefine “importer” ~~to include any person who removes cigarettes or tobacco products from a foreign country, Puerto Rico, or the United States Virgin Islands for sale in California from a customs bonded warehouse. This bill would include in the new definition of an importer any person who smuggles or otherwise unlawfully brings cigarettes or tobacco products into the state for sale to be any purchaser for resale in the United States of cigarettes or tobacco products manufactured outside of the United States for the purpose of making a first sale or distributing within the United States.~~

(3) The California Cigarette and Tobacco Products Licensing Act of 2003 prohibits manufacturers from selling cigarettes to distributors, wholesalers, importers, retailers, or any other person who is not licensed, as specified. The act further prohibits retailers, distributors, wholesalers, or importers from purchasing packages of cigarettes from any person unless he or she is in compliance with these licensure requirements, as specified. A violation of any of these provisions is a misdemeanor.

This bill would expand the above prohibitions by also providing that a manufacturer *or importer* shall not sell tobacco products to retailers, distributors, wholesalers, ~~importers~~, or any other person who is not licensed, as provided, and would prohibit a retailer, *or wholesaler, or importer* from purchasing packages of cigarettes or tobacco products from any person who is not licensed or whose license has been suspended or revoked.

By expanding the scope of an existing crime, this bill imposes a state-mandated local program.

(4) The act, in addition to providing for the licensing and regulation of manufacturers, distributors, wholesalers, importers, and retailers of cigarettes or tobacco products that are engaged in business in California, prohibits a manufacturer, distributor, wholesaler, importer, retailer, or any other person from selling counterfeit cigarette and tobacco products and provides that a violation of that prohibition is a crime. The act imposes specified fines or imprisonment for possessing, selling, or buying false or fraudulent cigarette tax stamps. The act also requires manufacturers and importers of cigarette products that provide those products to distributors or wholesalers to pay the board a fee for cigarettes sold in this state. Under existing law, the act is repealed, by its own terms, January 1, 2010.

This bill would delete the repeal date specified in current law, extending indefinitely the operation of the California Cigarette and Tobacco Products Licensing Act of 2003.

(5) Existing law regulates the distribution and sales of various types of tobacco products in the state, and specifies civil and criminal sanctions for violations of that regulatory scheme. Existing law prohibits any person from selling, offering for sale, distributing, or importing specific types of tobacco products, including bidis or beedies, unless the product is sold, offered for sale, or intended to be sold in a business that excludes minors from its premises. Existing law makes a violation of this prohibition a misdemeanor or makes that person subject to civil action.

This bill would amend the existing definition of “bidis” or “beedies” to include any product that is marketed and sold as “bidis” or “beedies.” This bill would also expand this prohibition to include tobacco products commonly referred to as “blunt wraps,” as defined, and thus impose a state-mandated local program by changing the definition of an existing crime. This bill would clarify that persons who violate this prohibition are subject to both criminal and civil liability.

(6) Existing law requires the State Board of Equalization to administer various taxes and fees, including taxes with respect to cigarettes and tobacco products, alcoholic beverages, motor vehicle fuel, and diesel fuel, among others. Existing law authorizes, until January 1, 2010, persons designated by the Executive Director of the State Board of Equalization to exercise the arrest powers of a peace officer in the enforcement of the taxes and fees administered by the State Board of Equalization.

This bill would delete the repeal date specified in existing law, extending the ability of designated persons to exercise the specified arrest powers indefinitely.

(7) Existing law establishes procedures under the Cigarette and Tobacco Products Tax Law for imposing taxes on sellers of black-market cigarettes and tobacco products, and procedures for the seizure and sale of property secured by liens for delinquencies under the Cigarette and Tobacco Products Tax Law. Existing law repeals these provisions, effective January 1, 2010.

This bill would delete the repeal date specified in current law, extending the authorization for these procedures indefinitely.

(8) The Cigarette and Tobacco Products Tax Law authorizes, until January 1, 2010, employees of the State Board of Equalization, under specified conditions, to enter and inspect a building, facility, site, or place, as described, where cigarettes or tobacco products are sold, produced, or stored, where there is evidence of tax evasion, or where there is failure to comply with the Master Settlement Agreement, a settlement entered into by states' attorneys general and various tobacco product manufacturers that provides for the allocation of money to the states and certain territories. Refusal of the inspection is subject to penalty.

This bill would delete the repeal date of this authorization, thereby extending the ability of specified board employees to enter and inspect the locations under the specific circumstances indefinitely.

(9) The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. That law requires a tax imposed by that law, with respect to distributions of cigarettes, to be paid by distributors through the use of stamps or meter register settings, and requires that these stamps or meter register settings be affixed to each package of cigarettes sold. That law prohibits the false or fraudulent making, altering, reuse, or counterfeiting of cigarette tax stamps or meter impressions by providing that a violation of that prohibition is a felony subject to imprisonment as specified, or to a fine of not less than \$1,000 and not more than \$10,000, or to both fine and imprisonment. That law prohibits the sale of unstamped or unmetered cigarettes, as specified, the violation of which is punishable by a fine of up to \$1,000, imprisonment in a county jail for not more than one year, or by both a fine and imprisonment. That law authorizes, until January 1, 2010, the seizure and destruction of

counterfeit cigarettes or tobacco products, as defined, and imposes misdemeanor punishment on the sale or possession thereof. That law imposes specified fines or imprisonment, or both, on a transporter who transports 40,000 or more cigarettes or tobacco products with a value of \$5,000 or more with the intent to defeat or evade the taxes imposed by that law under described conditions.

This bill would delete the repeal date and extend authorization for the seizure and destruction of counterfeit cigarettes or tobacco products and for the imposition of a misdemeanor for the sale and possession thereof. This bill would increase the fine for the sale of unstamped or unmetered cigarettes to \$25,000. This bill would also increase the fine imposed for falsely or fraudulently making a cigarette tax stamp or meter impression to \$25,000, and would increase the fine imposed on a transporter of cigarettes to \$25,000, for deposit into specified funds and accounts, ~~including continuously appropriated funds, thereby making an appropriation.~~

By increasing the penalties for existing crimes, this bill imposes a state-mandated local program.

(10) Existing law requires all distributors of cigarette and tobacco products that are required to be licensed by the State Board of Equalization to furnish a \$1,000 security deposit. Existing law, until January 1, 2007, requires a distributor, that defers payments for stamps or meter register settings and elects to make those payments on a twice-monthly basis, to furnish a security deposit of at least 50% of, but not more than twice the amount of, stamps and meter register settings, for which payment is deferred. For calendar years beginning on or after January 1, 2007, the amount of the security deposit is increased to 70% of, but not more than twice the amount of, stamps and meter register settings for which payment is deferred.

This bill would provide that for a distributor who elects to make payments on a monthly basis, as specified, the amount of the security deposit would be 70% of, but not more than twice the amount of, stamps and meter register settings for which the payment is deferred. This bill would provide that for a distributor who elects to make payments on a weekly basis, as specified, the amount of the security deposit would be 25% of the amount of, but not more than twice the amount of, stamps and meter register settings for which the payment is deferred. This bill would provide that distributors would not have to make an additional security deposit if the distributor's average monthly purchase of stamps or meter register settings for the previous

12 months does not exceed 72,000 stamps or meter register settings and if the distributor meets specified conditions.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22971 of the Business and Professions
2 Code is amended to read:
3 22971. For purposes of this division, the following terms
4 shall have the following meanings:
5 (a) "Board" means the State Board of Equalization.
6 (b) "Importer" means an importer as defined in Section 30019
7 of the Revenue and Taxation Code.
8 (c) "Distributor" means a distributor as defined in Section
9 30011 of the Revenue and Taxation Code.
10 (d) "Manufacturer" means a manufacturer of cigarettes or
11 tobacco products sold in this state.
12 (e) "Retailer" means a person who engages in this state in the
13 sale of cigarettes or tobacco products directly to the public from
14 a retail location. Retailer includes a person who operates vending
15 machines from which cigarettes or tobacco products are sold in
16 this state.
17 (f) "Retail location" means both of the following:
18 (1) Any building from which cigarettes or tobacco products
19 are sold at retail.
20 (2) A vending machine.
21 (g) "Wholesaler" means a wholesaler as defined in Section
22 30016 of the Revenue and Taxation Code.
23 (h) "Cigarette" means a cigarette as defined in Section 30003
24 of the Revenue and Taxation Code.
25 (i) "License" means a license issued by the board pursuant to
26 this division.

1 (j) "Licensee" means any person holding a license issued by
2 the board pursuant to this division.

3 (k) "Sale" or "sold" means a sale as defined in Section 30006
4 of the Revenue and Taxation Code.

5 (l) "Tobacco products" means tobacco products as defined in
6 subdivision (b) of Section 30121 and subdivision (b) of Section
7 30131.1 of the Revenue and Taxation Code.

8 (m) "Unstamped package of cigarettes" means a package of
9 cigarettes that does not bear a tax stamp as required under Part 13
10 (commencing with Section 30001) of Division 2 of the Revenue
11 and Taxation Code, including a package of cigarettes that bears a
12 tax stamp of another state or taxing jurisdiction, a package of
13 cigarettes that bears a counterfeit tax stamp, or a stamped or
14 unstamped package of cigarettes that is marked "Not for sale in
15 the United States."

16 (n) "Person" means a person as defined in Section 30010 of
17 the Revenue and Taxation Code.

18 (o) "Package of cigarettes" means a package as defined in
19 Section 30015 of the Revenue and Taxation Code.

20 (p) (1) "Control" or "controlling" means possession, direct or
21 indirect, of the power:

22 (A) To vote 25 percent or more of any class of the voting
23 securities issued by a person.

24 (B) To direct or cause the direction of the management and
25 policies of a person, whether through the ownership of voting
26 securities, by contract (other than a commercial contract for
27 goods or nonmanagement services), or otherwise provided;
28 however, no individual shall be deemed to control a person solely
29 on account of being a director, officer, or employee of such
30 person.

31 (2) For purposes of subparagraph (B) of this subdivision, a
32 person who, directly or indirectly, owns, controls, holds, with the
33 power to vote, or holds proxies representing 10 percent or more
34 of the then outstanding voting securities issued by another
35 person, is presumed to control such other person.

36 (3) For purposes of this division, the board may determine
37 whether a person in fact controls another person.

38 (q) "Law enforcement agency" means a sheriff, a police
39 department, or a city, county, or city and county agency or
40 department designated by the governing body of that agency to

1 enforce this chapter or to enforce local smoking and tobacco
2 ordinances and regulations.

3 (r) “Brand family” has the same meaning as that term is
4 defined in paragraph (2) of subdivision (a) of Section 30165.1 of
5 the Revenue and Taxation Code.

6 SEC. 2. Section 22979.21 is added to the Business and
7 Professions Code, to read:

8 22979.21. Every manufacturer or importer of tobacco
9 products shall obtain and maintain a license under this division to
10 engage in the sale of tobacco products. In order to be eligible for
11 obtaining and maintaining a license under this division, a
12 manufacturer or importer shall do all of the following in the
13 manner specified by the board:

14 (a) Submit to the board a list of all tobacco products they
15 manufacture or import.

16 (b) Update the list of all tobacco products they manufacture or
17 import whenever a new or additional product is manufactured or
18 imported or a listed product is no longer manufactured or
19 imported.

20 (c) Consent to jurisdiction of the California courts for the
21 purpose of enforcement of this division and appoint a registered
22 agent for service of process in this state and identify the
23 registered agent to the board.

24 SEC. 3. Section 22979.22 is added to the Business and
25 Professions Code, to read:

26 22979.22. (a) An application for a license by a manufacturer
27 or by an importer of tobacco products shall be on a form
28 prescribed by the board and shall include the following:

29 (1) The name, address, and telephone number of the applicant.
30 For applicants whose corporate offices are at a separate location,
31 the business name, address, and telephone number of the
32 corporate office. Citations issued to licensees shall be forwarded
33 to all addressees on the license.

34 (2) If any other licenses have been issued by the board to the
35 applicant, the license or permit numbers for each license or
36 permit then in effect.

37 (3) A statement by the applicant affirming that the applicant
38 has not been convicted of a felony and has not violated and will
39 not violate or cause or permit to be violated any of the provisions
40 of this division or any rule of the board applicable to the

1 applicant or pertaining to the manufacture, sale, or distribution of
2 cigarettes or tobacco products. If the applicant is unable to affirm
3 this statement, the application shall contain a statement by the
4 applicant of the nature of any violation or the reasons that will
5 prevent the applicant from complying with the requirements with
6 respect to the statement.

7 (4) A statement by the applicant that the contents of the
8 application are complete, true, and correct. Any person who signs
9 a statement pursuant to this subdivision that asserts the truth of
10 any material matter that he or she knows to be false is guilty of a
11 misdemeanor punishable by imprisonment of up to one year in
12 the county jail, or a fine of not more than one thousand dollars
13 (\$1,000), or both the imprisonment and the fine.

14 (5) Signature of the applicant.

15 (6) The name, address, and telephone number of the person
16 designated by the manufacturer or the importer as its agent for
17 receipt of service of process in this state.

18 (7) Any other information the board may require.

19 (b) The board may investigate to determine the truthfulness
20 and completeness of the information provided in the application.

21 (c) The board shall provide electronic means for applicants to
22 download and submit applications.

23 SEC. 4. Section 22979.23 is added to the Business and
24 Professions Code, to read:

25 22979.23. (a) Every manufacturer or importer of chewing
26 tobacco or snuff shall submit with each application a one-time
27 license fee of ten thousand dollars (\$10,000).

28 (b) Every manufacturer or importer of tobacco products,
29 excluding chewing tobacco or snuff, shall submit with each
30 application a one-time license fee of two thousand dollars
31 (\$2,000).

32 (c) *If a manufacturer or importer is required to submit an*
33 *application under, and to pay the fees required by, both*
34 *subdivisions (a) and (b), the total amount of fees required to be*
35 *submitted under this section shall not exceed ten thousand*
36 *dollars (\$10,000).*

37 SEC. 5. Section 22979.24 is added to the Business and
38 Professions Code, to read:

39 22979.24. (a) Every manufacturer or importer holding a
40 license pursuant to Section 22979.21 shall file a monthly report

1 to the board, in a manner specified by the board, ~~including, but~~
2 *which may include, but is not limited to, electronic media. The*
3 *monthly report shall include, but is not limited to, the following:*

4 (1) A list of all licensed distributors that received the
5 manufacturer's or importer's tobacco products.

6 (2) The total wholesale cost of the products.

7 (b) The board may suspend the license or revoke the license,
8 pursuant to the provisions applicable to the revocation of a
9 license set forth in Section 30148 of the Revenue and Taxation
10 Code, of any importer or any manufacturer that has failed to
11 comply with the requirements of this section.

12 SEC. 6. Section 22980.1 of the Business and Professions
13 Code is amended to read:

14 22980.1. (a) No manufacturer *or importer* shall sell
15 cigarettes or tobacco products to a distributor, wholesaler,
16 ~~importer~~, retailer, or any other person who is not licensed
17 pursuant to this division or whose license has been suspended or
18 revoked.

19 (b) (1) Except as provided in paragraph (2), no distributor;
20 ~~wholesaler, or importer or wholesaler~~ shall sell cigarettes or
21 tobacco products to a retailer, wholesaler, distributor, or any
22 other person who is not licensed pursuant to this division or
23 whose license has been suspended or revoked.

24 (2) This subdivision does not apply to any sale of cigarettes or
25 tobacco products by a distributor, wholesaler, ~~importer~~, or any
26 other person to a retailer, wholesaler, distributor, or any other
27 person that the state, pursuant to the United States Constitution,
28 the laws of the United States, or the California Constitution, is
29 prohibited from regulating.

30 (c) No retailer, distributor, ~~wholesaler, or importer or~~
31 *wholesaler* shall purchase packages of cigarettes or tobacco
32 products from a manufacturer *or importer* who is not licensed
33 pursuant to this division or whose license has been suspended or
34 revoked.

35 (d) (1) No retailer, ~~distributor, wholesaler, or importer or~~
36 *wholesaler* shall purchase cigarettes or tobacco products from
37 any person who is ~~required to be~~ *not* licensed pursuant to this
38 division ~~but who is not licensed~~ or whose license has been
39 suspended or revoked.

1 (2) *Notwithstanding subdivision (c), no distributor shall*
2 *purchase cigarettes or tobacco products from any person who is*
3 *required to be licensed pursuant to this division but who is not*
4 *licensed or whose license has been suspended or revoked.*

5 (e) Each separate sale to, or by, a retailer, wholesaler,
6 distributor, importer, manufacturer, or any other person who is
7 not licensed pursuant to this division shall constitute a separate
8 violation.

9 (f) No manufacturer, distributor, wholesaler, or importer may
10 sell cigarette or tobacco products to any retailer or wholesaler
11 whose license has been suspended or revoked unless all
12 outstanding debts of that retailer or wholesaler that are owed to a
13 wholesaler or distributor for cigarette or tobacco products are
14 paid and the license of that retailer or wholesaler has been
15 reinstated by the board. Any payment received from a retailer or
16 wholesaler shall be credited first to the outstanding debt for
17 cigarettes or tobacco products and must be immediately reported
18 to the board. The board shall determine the debt status of a
19 suspended retailer or wholesaler licensee 25 days prior to the
20 reinstatement of the license.

21 (g) No importer, distributor, or wholesaler, or distributor
22 functioning as a wholesaler, or retailer, shall purchase, obtain, or
23 otherwise acquire any package of cigarettes to which a stamp or
24 meter impression may not be affixed in accordance with
25 subdivision (b) of Section 30163 of the Revenue and Taxation
26 Code, or any cigarettes obtained from a manufacturer or importer
27 that cannot demonstrate full compliance with all requirements of
28 the federal Cigarette Labeling and Advertising Act (15 U.S.C.
29 Sec. 13335a et seq.) for the reporting of ingredients added to
30 cigarettes.

31 (h) Failure to comply with the provisions of this section shall
32 be a misdemeanor subject to penalties pursuant to Section 22981.

33 SEC. 7. Chapter 7 (commencing with Section 22995) of
34 Division 8.6 of the Business and Professions Code is repealed.

35 SEC. 8. Section 308.1 of the Penal Code is amended to read:

36 308.1. (a) Notwithstanding any other provision of law, no
37 person shall sell, offer for sale, distribute, or import any tobacco
38 product commonly referred to as “bidis” or “beedies,” unless that
39 tobacco product is sold, offered for sale, or intended to be sold in

1 a business establishment that prohibits the presence of persons
2 under 18 years of age on its premises.

3 (b) For purposes of this section, “bidis” or “beedies” means
4 any of the following:

5 (1) A product containing tobacco that is wrapped in temburni
6 leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*).

7 (2) A product that is marketed and sold as “bidis” or
8 “beedies.”

9 (c) Notwithstanding any other provision of law, no person
10 shall sell, offer for sale, distribute, or import any tobacco product
11 commonly referred to as “blunt wraps.”

12 (d) For purposes of this section, “blunt wraps” means any of
13 the following:

14 (1) A product made of tobacco, but contains less than 50
15 percent tobacco, that is designed for use as a wrap for another
16 substance that is smoked.

17 (2) A product that is marketed and sold as a blunt wrap.

18 (e) Any person who violates this section is guilty of a
19 misdemeanor and is also subject to a civil action brought by the
20 Attorney General, a city attorney, county counsel, or district
21 attorney for an injunction and a civil penalty of up to two
22 thousand dollars (\$2,000) per violation. This subdivision does
23 not affect any other remedies available for a violation of this
24 section.

25 SEC. 9. Section 830.11 of the Penal Code, as amended by
26 Section 1 of Chapter 190 of the Statutes of 2005, is amended to
27 read:

28 830.11. (a) The following persons are not peace officers but
29 may exercise the powers of arrest of a peace officer as specified
30 in Section 836 and the power to serve warrants as specified in
31 Sections 1523 and 1530 during the course and within the scope
32 of their employment, if they receive a course in the exercise of
33 those powers pursuant to Section 832. The authority and powers
34 of the persons designated under this section shall extend to any
35 place in the state:

36 (1) Persons employed by the Department of Financial
37 Institutions designated by the Commissioner of Financial
38 Institutions, provided that the primary duty of these persons shall
39 be the enforcement of, and investigations relating to, the

1 provisions of law administered by the Commissioner of Financial
2 Institutions.

3 (2) Persons employed by the Department of Real Estate
4 designated by the Real Estate Commissioner, provided that the
5 primary duty of these persons shall be the enforcement of the
6 laws set forth in Part 1 (commencing with Section 10000) and
7 Part 2 (commencing with Section 11000) of Division 4 of the
8 Business and Professions Code. The Real Estate Commissioner
9 may designate persons under this section, who at the time of their
10 designation, are assigned to the Special Investigations Unit,
11 internally known as the Crisis Response Team.

12 (3) Persons employed by the State Lands Commission
13 designated by the executive officer, provided that the primary
14 duty of these persons shall be the enforcement of the law relating
15 to the duties of the State Lands Commission.

16 (4) Persons employed as investigators of the Investigations
17 Bureau of the Department of Insurance, who are designated by
18 the Chief of the Investigations Bureau, provided that the primary
19 duty of these persons shall be the enforcement of the Insurance
20 Code and other laws relating to persons and businesses, licensed
21 and unlicensed by the Department of Insurance, who are engaged
22 in the business of insurance.

23 (5) Persons employed as investigators and investigator
24 supervisors of the Consumer Services Division or the Rail Safety
25 and Carrier Division of the Public Utilities Commission who are
26 designated by the commission's executive director and approved
27 by the commission, provided that the primary duty of these
28 persons shall be the enforcement of the law as that duty is set
29 forth in Section 308.5 of the Public Utilities Code.

30 (6) (A) Persons employed by the State Board of Equalization,
31 Investigations Division, who are designated by the board's
32 executive director, provided that the primary duty of these
33 persons shall be the enforcement of laws administered by the
34 State Board of Equalization.

35 (B) Persons designated pursuant to this paragraph are not
36 entitled to peace officer retirement benefits.

37 (7) Persons employed by the Department of Food and
38 Agriculture and designated by the Secretary of Food and
39 Agriculture as investigators, investigator supervisors, and
40 investigator managers, provided that the primary duty of these

1 persons shall be enforcement of, and investigations relating to,
2 the Food and Agricultural Code or Division 5 (commencing with
3 Section 12001) of the Business and Professions Code.

4 (b) Notwithstanding any other provision of law, persons
5 designated pursuant to this section may not carry firearms.

6 (c) Persons designated pursuant to this section shall be
7 included as “peace officers of the state” under paragraph (2) of
8 subdivision (c) of Section 11105 for the purpose of receiving
9 state summary criminal history information and shall be
10 furnished that information on the same basis as peace officers of
11 the state designated in paragraph (2) of subdivision (c) of Section
12 11105.

13 SEC. 10. Section 830.11 of the Penal Code, as amended by
14 Section 2 of Chapter 190 of the Statutes of 2005, is repealed.

15 SEC. 11. Section 30019 of the Revenue and Taxation Code is
16 amended to read:

17 30019. “Importer” means any *purchaser for resale in the*
18 *United States of cigarettes or tobacco products manufactured*
19 *outside of the United States for the purpose of making a first sale*
20 *or distribution within the United States.*~~of the following:~~

21 ~~(a) Any person in California who removes cigarettes or~~
22 ~~tobacco products manufactured in a foreign country, Puerto Rico,~~
23 ~~or the United States Virgin Islands, for sale in California from a~~
24 ~~customs bonded warehouse.~~

25 ~~(b) Any person who smuggles or otherwise unlawfully brings~~
26 ~~in cigarettes or tobacco products manufactured in a foreign~~
27 ~~country, Puerto Rico, or the United States Virgin Islands, for sale~~
28 ~~in California.~~

29 SEC. 12. Section 30142 of the Revenue and Taxation Code, as
30 added by Section 2 of Chapter 867 of the Statutes of 2003, is
31 amended to read:

32 30142. (a) The board shall fix the amount of the security
33 required of any distributor and may increase or reduce the
34 amount at any time. A minimum security in the amount of one
35 thousand dollars (\$1,000) shall be furnished by every distributor
36 that is required to be licensed.

37 (b) ~~If Except as provided for in subdivision (c), if a~~ distributor
38 desires to defer payments for stamps or meter register settings, as
39 provided in Article 2 (commencing with Section 30166) of
40 Chapter 3.5, the board shall require a security ~~equal as follows:~~

1 (1) If a distributor elects under Section 30168 to make
2 payments on a monthly basis, the board shall require a security
3 equal to not less than 70 percent of the amount and no more than
4 twice the amount, as fixed by the board, of the distributor's
5 purchases of stamps and meter register settings for which
6 payment may be deferred.

7 ~~(e) This section shall become operative on January 1, 2007.~~

8 (2) If a distributor elects under Section 30168 to make
9 payments on a weekly basis, the board shall require a security
10 equal to not less than 25 percent of the amount and no more than
11 twice the amount, as fixed by the board, of the distributor's
12 purchases of stamps and meter register settings for which
13 payment may be deferred.

14 (c) Upon authorization by the board, no additional security
15 shall be required for a distributor that desires to defer payments
16 for stamps or meter register settings, as provided in Article 2
17 (commencing with Section 30166) of Chapter 3.5, if the
18 distributor's average monthly purchase of stamps or meter
19 register settings for the previous 12 months does not exceed
20 seventy-two thousand (72,000) stamps or meter register setting
21 and if the distributor meets all of the following:

22 (1) Has been licensed under this part for a minimum of five
23 years.

24 (2) Has not been delinquent in the filing of any reports or
25 returns required under this part for the preceding three
26 consecutive years.

27 (3) Has not been delinquent in the payment of any tax under
28 this part, or for any other tax or fee administered or collected by
29 the board, for the preceding three consecutive years.

30 (4) Provides to the board and updates, as necessary, an
31 electronic mail address for the purpose of receiving payment
32 information, including, but not limited to, amounts owing for
33 stamps and meter register settings purchased.

34 (5) Any other criteria the board may require.

35 SEC. 13. Section 30168 of the Revenue and Taxation Code, as
36 added by Section 4 of Chapter 867 of the Statutes of 2003, is
37 amended to read:

38 30168. (a) ~~Amounts~~ Except as provided for in subdivision
39 (c), amounts owing for stamps and meter register settings
40 purchased on the deferred-payment basis in any calendar month

1 shall be due and payable on or before the 25th day of the
2 following calendar month. Payment shall be made by a
3 remittance payable to the board.

4 ~~(b) This section shall become operative on January 1, 2007.~~

5 *(b) A distributor shall elect to make the payment required by*
6 *subdivision (a) on either a monthly or weekly basis. An election*
7 *made pursuant to this subdivision shall remain in effect for at*
8 *least one year from the date the election is made. If the board*
9 *finds that good cause exists for a distributor's inability to*
10 *maintain the election for the full year, the board shall authorize*
11 *the distributor to make a new election, as otherwise authorized*
12 *by this subdivision, prior to the expiration of the one-year period*
13 *following the prior election.*

14 *(1) If a distributor elects to make the payment required by*
15 *subdivision (a) on a monthly basis, the distributor shall remit the*
16 *payment on or before the 25th days of the month following the*
17 *month in which the stamps and meter register settings were*
18 *purchased.*

19 *(2) If a distributor elects to make the payment required by*
20 *subdivision (a) on a weekly basis, the distributor shall remit the*
21 *payment on or before Wednesday following the week in which the*
22 *stamps and meter register settings were approved and released.*
23 *Every distributor electing to make payment on a weekly basis*
24 *shall provide to the board and update, as necessary, an*
25 *electronic mail address for the purpose of receiving payment*
26 *information, including but not limited to, amounts owing for*
27 *stamps and meter register settings purchased.*

28 *(c) Amounts owing for stamps and meter register settings*
29 *purchased on the deferred-payment basis without a security*
30 *pursuant to subdivision (c) of Section 30142 shall be due and*
31 *payable on or before Wednesday following the week in which the*
32 *stamps and meter register settings were purchased. Payment*
33 *shall be made by a remittance payable to the board.*

34 ~~SEC. 12.~~

35 *SEC. 14.* Section 30216 of the Revenue and Taxation Code is
36 repealed.

37 ~~SEC. 13.~~

38 *SEC. 15.* Section 30359 of the Revenue and Taxation Code is
39 repealed.

~~SEC. 14.~~

SEC. 16. Section 30435 of the Revenue and Taxation Code is amended to read:

30435. (a) An employee of the board, upon presentation of the appropriate identification and credentials, is authorized to enter into, and conduct an inspection of any building, facility, site, or place described in subdivision (b).

(b) Any building, facility, site, or place at which cigarette or tobacco products are sold, produced, or stored, or any building, facility, site, or place for which there is evidence of either the evasion of the taxes imposed under this part, or the failure to comply with the requirements of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code, including, but not limited to, Section 30165.1.

(c) Any inspection performed under the authority of this section shall be performed in a reasonable manner and at a reasonable time, taking into consideration the normal business hours of the building, facility, site, or place that is inspected.

(d) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 30471.

~~SEC. 15.~~

SEC. 17. Section 30473 of the Revenue and Taxation Code is amended to read:

30473. (a) Any person who falsely or fraudulently makes, forges, alters, reuses or counterfeits any stamp or meter impression provided for or authorized under this part, or tampers with any metering machine authorized under this part, or causes or procures to be falsely or fraudulently made, forged, altered, reused, or counterfeited, any such stamp or meter impression or knowingly and willfully utters, publishes, passes, or tenders as genuine any such false, forged, altered, reused, or counterfeited stamp or meter impression, for the purpose of evading the tax imposed by this part, is guilty of a felony and subject to imprisonment for two, three, or four years, or to a fine of not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000), or to both fine and imprisonment.

1 ~~SEC. 16.~~

2 *SEC. 18.* Section 30474 of the Revenue and Taxation Code is
3 amended to read:

4 30474. (a) Any person who knowingly possesses, or keeps,
5 stores, or retains for the purpose of sale, or sells or offers to sell,
6 any package of cigarettes to which there is not affixed the stamp
7 or meter impression required to be affixed under this part, when
8 those cigarettes have been obtained from any source whatever, is
9 guilty of a misdemeanor and shall for each offense be fined an
10 amount not to exceed twenty-five thousand dollars (\$25,000), or
11 be imprisoned for a period not to exceed one year in the county
12 jail, or, at the discretion of the court, be subject to both the fine
13 and imprisonment in the county jail.

14 (b) In addition to the fine or sentence, or both, each person
15 convicted under this section shall pay one hundred dollars (\$100)
16 for each carton of 200 cigarettes, or portion thereof, if that person
17 knowingly possessed, or kept, stored, or retained for the purpose
18 of sale, or sold or offered for sale in violation of this section, as
19 determined by the court. The court shall direct that 50 percent of
20 the penalty assessed be transmitted to the local prosecuting
21 jurisdiction, to be allocated for costs of prosecution, and 50
22 percent of the penalty assessed be transmitted to the State Board
23 of Equalization.

24 (c) This section does not apply to a licensed distributor that
25 possesses, keeps, stores, or retains cigarettes before the necessary
26 stamp or meter impression is affixed.

27 ~~SEC. 17.~~

28 *SEC. 19.* Section 30474.1 of the Revenue and Taxation Code
29 is amended to read:

30 30474.1. (a) Notwithstanding any other provision of law, the
31 sale or possession for sale of counterfeit tobacco products, or the
32 sale or possession for sale of counterfeit cigarettes by a
33 manufacturer, importer, distributor, wholesaler, or retailer shall
34 result in the seizure of the product by the board or any law
35 enforcement agency and shall constitute a misdemeanor
36 punishable as follows:

37 (1) A violation with a total quantity of less than two cartons of
38 cigarettes shall be a misdemeanor punishable by a fine not to
39 exceed five thousand dollars (\$5,000), or imprisonment not to
40 exceed one year in a county jail, or both the fine and the

1 imprisonment, and shall also result in the revocation by the board
2 of the manufacturer, distributor, or wholesale license.

3 (2) A violation with a quantity of two cartons of cigarettes or
4 more shall be a misdemeanor punishable by a fine not to exceed
5 fifty thousand dollars (\$50,000) or imprisonment not to exceed
6 one year in a county jail, or both the fine and imprisonment, and
7 shall also result in the revocation by the board of the
8 manufacturer, distributor, or wholesaler license.

9 (b) A court shall consider a defendant's ability to pay when
10 imposing fines pursuant to this section.

11 (c) For the purposes of this section, counterfeit cigarette and
12 tobacco products include cigarette and tobacco products that
13 have false manufacturing labels, false or fraudulent stamps or
14 meter impressions, or a combination thereof.

15 (d) The board shall seize and destroy any cigarettes or other
16 tobacco products forfeited to the state under this section.

17 ~~SEC. 18.~~

18 *SEC. 20.* Section 30475 of the Revenue and Taxation Code is
19 amended to read:

20 30475. (a) Any transporter who transports cigarettes or
21 tobacco products upon the highways, roads or streets of this state
22 without having obtained a permit or without having a permit in
23 the transporting vehicle as prescribed by Section 30431 or
24 without having in the transporting vehicle the invoices, bills of
25 lading or delivery tickets for the cigarettes or tobacco products as
26 prescribed by Section 30432 is guilty of a misdemeanor and upon
27 conviction thereof shall be fined not more than one thousand
28 dollars (\$1,000) or be imprisoned for not more than one year in
29 the county jail, or be subject to both fine and imprisonment in the
30 discretion of the court.

31 (b) Any transporter who, with intent to defeat or evade or with
32 intent to aid another to defeat or evade the taxes imposed by this
33 part, at any given time transports 40,000 or more cigarettes or
34 tobacco products with a value of five thousand dollars (\$5,000)
35 or more upon the highways, roads or streets of this state without
36 having obtained a permit or without having a permit in the
37 transporting vehicle as prescribed by Section 30431 or without
38 having in the transporting vehicle the invoices, bills of lading or
39 delivery tickets for the cigarettes or tobacco products as
40 prescribed by Section 30432 shall be punished by imprisonment

1 in the county jail for not more than one year, or in the state
2 prison, or by fine of not more than twenty-five thousand dollars
3 (\$25,000), or be subject to both fine and imprisonment in the
4 discretion of the court.

5 ~~SEC. 19.~~

6 *SEC. 21.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the
11 penalty for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition of a
13 crime within the meaning of Section 6 of Article XIII B of the
14 California Constitution.